

**COMPLIANCE BOARD OPINION NO. 94-9**

November 15, 1994

*Mr. Eugene W. Grant*

The Open Meetings Compliance Board has considered your complaint dated September 26, 1994, alleging certain violations of the Open Meetings Act by the City Council of Seat Pleasant. Specifically, you alleged that on September 23, 1994, you and other citizens were denied access to what you characterize as a meeting of the City Council. Specifically, you noted in your complaint that four Council members, constituting a quorum, were present. Also present were various police officials from the city and county and other city officials. You alleged "that there were no signs posted indicating that it was a closed session. This meeting had no written agenda nor was a notice published in any paper, news media or even a public service announcement informing the citizens of a private meeting."

In a timely response on behalf of the City Council, Council President Luther N. Arrington indicated that the gathering in question was not a meeting of the City Council:

On the 23rd of September 1994, the City Administrator, Wendy Watkins, held a meeting along with Chief Harvey of the Seat Pleasant Police Department and several police officers of the Prince George's County Police Department to discuss the status of police investigative efforts in fighting crime (drugs) in the City of Seat Pleasant. Prior to the meeting, Ms. Watkins had notified the City Council that such a meeting would occur and invited each council member to attend. This meeting was not convened by the City Council. Four council members attended.

Mr. Arrington went on to describe the substance of the meeting as a briefing by the Chief of Police and the Prince George's County Police about crime-fighting efforts, including undercover operations. These briefings included "information about the location of houses and the names of persons in the city who were involved in drug activity. The police officers also discussed further methods of investigating criminal activity whereby the City and County police could consolidate their efforts in Seat Pleasant by having a significant presence in high crime areas."

Mr. Arrington asserts that the "sensitive nature of the discussions," including the naming of individuals suspected of criminal activity and a discussion of crime-fighting strategies, justified closing the meeting to the public. "It should be noted," Mr. Arrington added, "that this meeting was not convened by the Council nor were any votes taken on any issue."

The threshold, and determinative, issue is whether the Open Meeting Act applied to this gathering. If so, then the Act's public notice and other procedural requirements should have been followed, even if the meeting could lawfully have been closed. If not, then the notice and other requirements of the Act were inapplicable.

The Open Meetings Act applies only to the meetings of a "public body." See §10-505. The City Council of Seat Pleasant is a "public body," of course. A single official like the City Administrator is not. §10-502(h).

On the facts as we understand them, the gathering on September 23 was not a meeting of a "public body." Rather, the meeting was called by a single official. City Council members were merely invitees to the briefing, which presumably would have taken place whether a quorum of Council members was present or not. The Open Meetings Act does not apply under such circumstances, even when a quorum of members of public body is present at the meeting. See Office of the Attorney General, *Open Meeting Act Manual* 4 (1992) ("If the Act is otherwise inapplicable to a gathering, the Act does not become applicable merely because a quorum of members of a public body is present.").

To be sure, "a public body may not escape its obligations under the Act, even in some other entity's forum, if the public body *itself* engages in 'the consideration or transaction of public business.'" Compliance Board Opinion 92-2, at 2 (quoting §10-502(g)). While it is clear that the members of the City Council present at the City Administrator's meeting learned information that might affect Council deliberations in the future, the test is whether the four members at the meeting functioned as a quorum. We have no basis for so concluding. Their participation appears to have been as individuals, rather than as a decision-making body itself engaged in the conduct of public business.

In a recent decision, the Court of Special Appeals held the Act not to have been violated when a quorum of county council members attended a political party gathering, even though one of the topics of discussion was an issue before the council. *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157 (1994). The key was that the council members participated as individuals only; they did not deliberate, vote, or otherwise act as a body. The same appears to be the case here.

Thus, the Compliance Board finds that the Open Meetings Act was inapplicable to the meeting on September 23, 1994.<sup>1</sup>

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
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<sup>1</sup> In light of this conclusion, we need not consider whether, if the City Council were deemed to have held a "meeting," the nature of the discussion was such as to constitute "an executive function" excluded from the Act. *See* §10-503(a)(1)(i). Nor need we consider the exception to the Act in §10-508(a)(10), which authorizes a closed meeting to "discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including ... the deployment of ... police services and staff ...."